



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR98-1343

Dear Commissioner Bost:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116053.

The Department of Human Services (the "department") received a request from an employee for copies of certain "OIG reports." You assert that the requested reports are excepted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.


To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex.

App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). *See* Open Records Decision No. 386 (1983) (pendency of complaint before the Equal Employment Opportunity Commission demonstrates reasonably anticipated litigation). The department may withhold the requested records from the requestor.¹

The requestor states that she seeks the requested information not under the Open Records Act (the "act"), but as a department employee. The requestor's status as an employee gives her no special right of access to the requested information under the act. *Cf.* Open Records Decision No. 386 (1983). We are not aware of a statute that would grant the requestor here a right to the information at issue. Thus, even though the requestor here asks for the information as a department employee, the department may withhold the information from the requestor under the act.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 116053

Enclosures: Submitted documents

cc: Ms. Patsy Watson
833 Piedmont Drive
Abilene, Texas 79601
(w/o enclosures)

¹If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).